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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAMES E. PRICER
Appeal 2008-000055
Application 09/779,866
Technology Center 2400

Decided: August 7, 2009

Before ALLEN R. MACDONALD, HOWARD B. BLANKENSHIP, and ST. JOHN COURTENAY, III *Administrative Patent Judges*

MACDONALD, *Administrative Patent Judge*

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's rejection of claims. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

STATEMENT OF THE CASE

According to Appellant, the invention relates to ordering transactions within a group and analyzing the groups of transactions to find associations in the order of the transactions in the groups.[1]

Exemplary Claim

1. A method for use in analyzing associations in the sequence of transactions, the method comprising
   loading data from the transactions into a database system, where the data includes an entry for each transaction and the transactions are grouped into sessions;
   ordering the transactions in sequence within each session; and
   performing an analysis of the sessions of transactions to find associations in the sequence of the transactions in the sessions.

Prior Art

The Examiner relies on the following prior art references to show unpatentability:

Lazarus	US 6,430,539	Aug. 6, 2002
Anderson	US 5,974,396	Oct. 26, 1999
Tate	US 6,611,829	Aug. 26, 2003
Miller	WO 00/20998	Oct. 1, 1999

[1] *See* Spec. ¶6.

Examiner's Rejections

1. The Examiner rejected claims 1-4, 6, 20, and 22 under 35 U.S.C. §102(e) as anticipated by Lazarus.
2. The Examiner rejected claim 5 under 35 U.S.C. § 103(a) as being unpatentable over Lazarus and Anderson. [2]

THE REJECTION OVER LAZARUS

Claims 1-4, 6, 20, and 22

ISSUE

The issue before us is whether the prior art teaches or suggests (1) grouping transactions into sessions, and (2) finding associations in a sequence of transactions.

FINDINGS OF FACT

1. The Examiner found (1) the Appellant cited US Patent Publication 2002/0143925 "as a copending application, not incorporated by reference, [and] thus, the content of this US Pat. Pub. … is not part of the specification of the present application." Further, the Examiner found that "[t]his content is not read into the appealed claims or used as to interpret the claimed limitations." The Examiner concluded "[t]hus, the claimed transactions grouped into transactions is not binding to the interpretation as the appellant alleged" (Ans. 7).

[2] Contrary to any indication of other rejections in the record over Lazarus and Miller, the only rejections before us on appeal are the Examiner's rejection (1) under 35 U.S.C. § 102 (e) over Lazarus, and (2) the Examiner's rejection under 35 U.S.C. § 103 (a) over Lazarus and Anderson.

2. We find that Appellant references co-pending United States Patent Application Serial Number 09/752, 355, entitled IDENTIFYING WEB-LOG DATA REPRESENTING A SINGLE USER SESSION, filed on December 29, 2000, in the Background section of the present application (Spec. ¶4).

3. The Examiner found "Lazarus discloses a number of transactions in a time interval, or other sequence related criteria, which are read on the claimed transactions grouped into sessions" (Ans. 7). Further, the Examiner found that "[a]ccording to Lazarus, the analysis of consumer spending uses spending data and processes that data [for] identified co-occurrences of purchases within co-occurrence windows, which may be based on either a number of transactions, a time interval, or other sequence related criteria," and (2) "[t]hus, Lazarus teaches the ability to group transactions into a time interval, i.e., session" (Ans. 7-8).

4. The Examiner also found "Lazarus teaches that the co-occurrence windows (a number of transactions) are used to derive measures of how closely related any two merchants are based on their frequencies of co-occurrence [to] each other" (Ans. 9). The Examiner then concluded "this implies that the association of spending data in Lazarus is analyzed to find the co-occurrence buying pattern to predict further course of action" (Ans. 9).

5. We also find that Lazarus discloses "[e]ach consumer's transaction data reflecting their purchases (e.g.[,] credit card statements, bank statements, and the like) is chronologically organized to reflect the general order in which purchases were made at the merchants. Analysis of

each consumer's transaction data in various co-occurrence windows identifies which merchants co-occur." (Lazarus, col. 3, ll. 35-41).

PRINCIPLES OF LAW

"The Patent and Trademark Office (PTO) must consider all claim limitations when determining patentability of an invention over the prior art." *In re Lowry*, 32 F.3d 1579, 1582 (Fed. Cir. 1994) (citing *In re Gulack*, 703 F.2d 1381, 1385 (Fed. Cir. 1983)). "Claims must be read in view of the specification, of which they are a part." *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 979 (Fed. Cir. 1995) (en banc) (citations omitted). "[T]he PTO gives claims their 'broadest reasonable interpretation." *In re Bigio*, 381 F.3d 1320, 1324 (Fed. Cir. 2004) (quoting *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000)). "Moreover, limitations are not to be read into the claims from the specification." *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993) (citing *In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989)).

For a rejection under § 102, Appellants may sustain this burden by showing that the prior art reference relied upon by the Examiner fails to disclose an element of the claim. It is axiomatic that anticipation of a claim under § 102 can be found only if the prior art reference discloses every element of the claim. *See In re King*, 801 F.2d 1324, 1326 (Fed. Cir. 1986); *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 1458 (Fed. Cir. 1984).

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F.2d 1071, 1073 (Fed. Cir. 1988). In so

doing, the Examiner must make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966).

If the Examiner's burden is met, the burden then shifts to the Appellants to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. *See In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

ANALYSIS

THE REJECTION OVER LAZARUS

Claims 1-4, 6, 20, and 22

Transactions Grouped Into Sessions

Appellant contends "Lazarus does not disclose grouping the transactions into sessions" (Reply Br. 3, See also App. Br. 6). Appellant contends "[a]n example of determining which transactions are part of a session is illustrated in U.S. Patent Application 2002/0143925" (App. Br. 6). Based on U.S. Patent Application 2002/0143925, Appellant argues "[a] person of ordinary skill in the art at the time the present application was filed would understand that transactions are grouped into sessions based on user activity or inactivity: so long as a user makes a Web-log log entry without a lag between entries greater than a prescribed amount of time, the session will continue" (App. Br. 6). Appellant argues they "only cite the co-pending application to show the meaning of 'session' to a person of ordinary skill in the art" (Reply Br. 3).

Appellant also argues "Lazarus deals with purchases within 'a number of transactions, a time interval, or other sequence related criteria,' which are

not sessions, but are instead arbitrary divisions of time, transactions or other factors" (App. Br. 6). Further, Appellant (1) argues "[t]he Examiner has not provided any reference to support the assertion that the 'co-occurrence windows' or 'groups of observations' discussed in Lazarus are sessions," and (2) "disagree[s] that the 'co-occurrence windows' or 'groups of observation' discussed in Lazarus are 'sessions' as that term is used in the claims" (Reply Br. 3). Appellant arguments, made above, apply to claims 1 and 20 and claims 2-4 and 6, as well as claim 22, which depend from claims 1 and 20 respectively (*See* Reply Br. 3-4).

We find that the Specification of the present application does not provide an explicit definition of the term "session." We agree with the Examiner that US Patent Publication 2002/0143925 is a copending application, not incorporated by reference, as Appellant references the Publication in the Specification, but does not explicitly incorporate the Publication into the Specification of the present application (*See* FF 1-2). Further, we find that the Specification of the present application does not limit the definition of "session," to transactions that are based on user activity or inactivity, so long as a user makes a Web-log log entry without a lag between entries greater than a prescribed amount of time," as argued by Appellant (*See* App. Br. 6).

Thus, we agree with the Examiner that we are not bound by Appellant's interpretation of the term "session." Further, we find that a skilled artisan would have recognized that "a number of transactions in a time interval, or other sequence related criteria" corresponds to "transactions grouped into sessions" (*See* FF 3). Further, we find that a skilled artisan also would have recognized that "co-occurrence windows" correspond to

sessions, as co-occurrence windows are based on "a number of transactions in a time interval, or other sequence related criteria" (*See* FF 3). Thus, we agree with the Examiner that Lazarus teaches "the transactions are grouped into sessions," as recited in exemplary claim 1.

Finding Associations in the Sequence of the Transactions in the Sessions

Exemplary claim 1 recites "performing an analysis of the sessions of transactions to find associations in the sequence of the transactions in the sessions" (App Br. 10, Claims Appendix).

Appellant "disagree[s] that Lazarus … discusses 'sequence of transaction data,'" (Reply Br. 5). Further, Appellant argues "[t]he cited portion of Lazarus[,] states that "this aspect of the invention accurately identifies and captures the patterns of spending behavior which result in the co-occurrence of transactions at different merchants: (Reply Br. 5). Further, Appellant argues (1) Lazarus discusses "'determin[ing] which transactions are likely to occur together,'" and (2) "[f]inding 'which transactions are likely to occur together' is not the same thing as determining associations in the sequence of the transactions" (emphasis omitted) (App. Br. 8). Appellant contends that Lazarus finds patterns in shopping behavior, which is not the same as determining associations in the sequence of transactions (Reply Br. 5-6).

As we found above, Lazarus teaches co-occurrence transactions that are grouped into sessions, *i.e.*, co-occurrence windows (*See* FF 3). Further, we find that Lazarus discloses that "[a]nalysis of each consumer's transaction data in various co-occurrence windows identifies which merchants co-occur" (FF 5). Thus, Lazarus discloses analyzing sessions to find associations. Further, Lazarus teaches finding associations in the sequence of the

transactions in the sessions, as the transactions in the session, by virtue of them being placed in a co-occurrence window, are necessarily arranged in a sequential order, as the transactions are based on a time interval or other sequence related criteria (*See* FF 3 and 5). Thus, we also find Lazarus discloses "performing an analysis of the sessions of transactions to find associations in the sequence of the transactions in the sessions, " as recited in exemplary claim 1.

Accordingly, Appellant has not persuaded us of error in the Examiner's finding of anticipation, based on Lazarus, regarding exemplary claim 1. Appellant argues claims 1-6, 20, and 22 as a group (*See* App. Br. 5-8; Reply Br. 2-3). Thus, the Examiner's rejection of claims 1-4, 6, 20, and 22 is sustained.

THE REJECTION OVER LAZARUS AND ANDERSON

Claim 5

The Examiner rejected claim 5 over Lazarus and Anderson. However, Appellant only argues claim 5 with regard to the Lazarus reference (*See* App. Br. 7-8; Reply Br. 4-6). As Appellant argues claim 5 along with exemplary claim 1, we sustain the Examiner's rejection of claim 5 for the same reasons discussed above with respect to exemplary claim 1.

DECISION

We affirm the Examiner's rejection of claims 1-6, 20, and 22.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

PEB

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